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17. ASSISTANCE AND PROTECTION UNDER ARTICLE X OF THE CWC

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ABSTRACT

With the acceptance of the Convention on prohibition of the chemical weapons, the State Parties (SP) have clearly stated their orientations to prohibit the development, production, otherwise acquire, stockpiling and use of the chemical weapons, as well as its destruction of the already produced chemical weapons within given period of time. However, since the danger from the chemical weapons pose a threat as long as it exist, the Convention includes the obligations and rights of every State Party to provide and to receive assistance in case of chemical weapons threat.

According to stated above, it is the obligation of the Organization to fulfill the task of mutual assistance of all their State Parties.

Under the objective to fulfill these tasks given to the Organization, it is necessary to define the system of directed attitudes and principles in the organization of preparations and use of the teams/units, material and technical resources and other forms of help, which can, theoretically speaking, be called "The OPCW Doctrine" in providing the assistance to the State Parties, according to the article X of the Convention on prohibition of the chemical weapons.

According to the OPCW Doctrine the Organization, as we believe, should assure coordinated operations of the joint international teams/units on the territory of the country that has requested help, according to unique plan to provide assistance to fulfill obligations according to article X of the Convention, and in the function of preserving dignity of the Convention and Organization in its entirety.

It is a very well known fact that the origin of every doctrine is in the strategy, which certain subject prescribes as its own basic orientations. The State Parties of the Organization on prohibition of the chemical weapons have clearly stated their orientations by accepting the Convention on prohibition of the chemical weapons and put their trust in carrying out the strategy into the Organization and their bodies. Among all it is put in trust to the Organization the conduction of the article X of the Convention which prescribes the obligation of giving the defined forms of help by the State Parties, as well as the right to be given that help as coordinated by the article X paragraph 8.

Congruently to the obligations, State Parties have put to the disposal of the Organization the equipment, teams and units which differ in assignment, size, rigging out, abilities and tactics. When we add to that the numerous legal and administrative obstacles while planning the use and actual use of the equipment, teams and units in providing assistance, we can only assume the size of the problem which the Organization might face while fulfilling its obligations emerged from article X of the Convention.

To solve problems as easier as possible and reduce them to the group of defined, developed and accepted basic regulations of operation and behaviour in practice, it is necessary to define, accept and prescribe "The Organization Doctrine in providing help to the State Parties according to article X of the Convention".

Theoretically, the Doctrine really is not anything else but a complete system scientifically set, worked out in detail and accepted basic regulations on activities, which give the direction in operations and actions in practice.

In accordance with the upper definition, the Doctrine should clearly respond and determine the directions on operations and actions in practice regarding the following questions:

- a) Which are the objectives in providing assistance and protection?
- b) To whom and when the assistance and protection should be given?
- c) Where, how and under which conditions the assistance and protection should be given?
- d) Which are the units and means of providing assistance and protection?
- e) How are the objectives of providing assistance and protection realized?
- f) Which are the regulations in providing assistance and protection?

Once the State Parties Convention has verified the Doctrine, it should be published through written forms, in the lineament of regulations of the equipment, teams/units, norms (minimal administrative, material, personnel and legal criteria), directions, guidance, instructions, manuals, textbooks, etc.

Even if all the answers on every question were completely clear, the Organization would still have an enormous job in preparation and verification of the Doctrine, as well as its publication and execution in the real world. We believe that the Organization would have a large support of the majority of the State Parties as well as some international organizations (UN, for example) that could offer some solutions already defined and verified in practice. Unfortunately, even then all the answers are not completely clear and the good will and additional effort to find answers acceptable for every State Party is needed.

The objectives of providing assistance are clearly prescribed by the preamble of the Convention and by the article X of the Convention and we believe that it has, considering this question, achieved full consensus of all the State Parties. But a problem appears when defining the answer to the question to “whom and when to provide help”. According to article X paragraph 8 the Convention has emphasized that each State Party has the right to request and subject to the procedures set forth in paragraphs 9, 10 and 11 to receive assistance and protection against the use or threat of use chemical weapons if it consider that:

- a) Chemical weapons have been used against it;
- b) Riot control agents have been used against it as a method of warfare; or
- c) It is threatened by actions or activities of any State that are prohibited for SP by Article I.

According to this definition of article X paragraph 8 of the Convention two problems are brought before the Organization and State Parties which puts under the question mark the meaning of providing assistance, and subsequently, the consensus of the State Parties on to whom and when to provide assistance.

The first problem is of conceptive nature and it is based on presumption that in regarding to the Convention every year there is going to be less and less chemical weapons and subsequently the need for providing assistance and protection will be decreasing, while there will actually be more and more chemicals from the list II and III and discrete organic chemicals (DOC), their manufacturing facilities and warehouses. That fact confirms that the danger for State Parties will be at least equal, if not larger, from the moment of destruction of all declared chemical weapons.

From what was said comes out the second problem of the definitional nature: what is really a chemical weapon and what is considered by chemical attack, from which is derived the interpretation on who has the right to be provide with assistance.

By the examination of the article I and II of the Convention clearly follows that every attack by chemical weapons, toxic chemicals and their precursors, ammunition and the

devices specially designed to cause death, is considered to be a chemical attack prohibited by the Convention, and the attacked SP has the right to ask for assistance and protection.

Likewise, it is also very clear that this toxic chemicals and precursors are on the list I, II and III of chemical as well as on the list of discrete organic chemicals, which are, according to article VI, subdued to the declaration altogether with the their manufacturing facilities and warehouses. The outcome is the paradox of the article I and article X paragraph 8 of the Convention according to which it is prohibited to use own chemical weapons and all defined by article II, but the attack on the manufacturing facilities and warehouses of the chemical weapons, toxic chemical and precursors on the territory other State Party with the use of conventional weapons or by terrorist act does not consider to be the use of chemical weapons. A lot of people are eager to interpret this as "common" disaster in which case the State Party has no right asking for assistance and protection.

Beside the problems the State Party has when struck by such common disaster, here appears one very dangerous precedent which was already used on the territory of the Republic of Croatia (during the war activities against the Republic of Croatia 1991-1995), which is not to act in aggression by using chemical weapons but using conventional weapons on chemical facilities with the objective of causing the emission of the toxic substances, the same which each SP, according to the article VI, has the obligation to declare.

Where, how and under which condition assistance and protection are provided are questions, which are relatively easier to answer when, through table exercises, every possible real scenario, and supposition, which may occur while providing assistance, is worked through.

According to the present reasoning, a SP has the right to ask for assistance and protection if it is attacked by a chemical weapons and there is no question about that. The question is what kind of assistance is possible, real and appropriate. It is certain that the assistance in the form of teams/units for decontamination questionable if the attack has happened between the forces in touch/conflict because the assistance could be considered as an intrusion into the conflict. It is also precarious which SP will offer their assistance in the form of teams/units in the zone of the conflict. However, that does not mean that the assistance is not possible in the form of means and equipment and in the form of medical teams.

The scenarios and training will show what is the real amount of forces and means needed for certain situation and define the time in which, from the moment of the actual attack, the assistance is still appropriate. This specially relates to the article X paragraph 8 subparagraph (b) because the assistance, in case of the riot control agents use, in form of teams/units actually becomes questionable, but not the protective equipment and teams for education as well.

Paragraph 8, subparagraph (c) is quite general in relation to previous subparagraphs and its clarification can also contribute stuff training and scenarios and suppositions.

Forces and means by which the Organization provides assistance to the countries and State Parties, which ask for it, is a very complex question.

When we review up-to date equipment, teams and units that are given on disposal of the Organization, it is very clear that they differ in its purpose, size, rigging out, possibilities, tactics, which significantly impedes achieving the mutual objective. At the same time more attention should be given to the series of basic presumptions as a prerequisites for fulfillment of that objective which we will define in this Doctrine as minimal administrative, material and personnel criteria, of which we feel that the equipment, teams and units should fulfill, before they are set to disposal to the Organization. Speaking about minimal criteria that should be prescribed by Doctrine when considering teams/units of State Parties, which are

offered as a form of assistance according to article X, we comprise, above all, the following criteria:

- a) time of readiness of the teams/units for engagement from the time of the call unit the readiness for transport
- b) choice and education of members of the teams/units
- c) size and rigging out of the teams/units with regard to the tactical possibilities
- d) size and rigging out of the teams/units with regard to the length of engagement
- e) minimal logistic support to the units by their domicile country
- f) criteria of health, legal and financial insurance of the members of the teams/units
- g) criteria of rigging out personal equipment, equipment for self-protection, self-aid, self-decontamination and means and devices for chemical detection and monitoring
- h) administrative measures and procedures.

The answer to the question how are the objectives of providing assistance and protection fulfilling has to start from a clear political platform of the Organization given throughout the Preamble of the Convention and all positive political and legal international acts which were the Organization's starting point while creating the Convention or which have been accepted as human acquirement.

The Organization Doctrine has to enable the fulfillment of its political objectives. Because of that, beside the defined ways of providing assistance as well as the defined procedure of seeking assistance, given through article X of the Convention, the Doctrine also has to offer the answer on so called "border way cases" defined through the second question of this paper.

Also the Doctrine should offer the answer about the ways of collaboration with all other international organizations that deal with humanitarian questions, and especially with competent bodies of the UN, UNHCR, etc. This is even more interesting while finding solution for border way cases in which two or more international organizations can achieve their political objectives united by already set procedure and regulations of collaboration.

Regulations which should be respected by the SP which participate in action of providing assistance and rescue are given generally through international legal acts which regulate war, humanitarian and common law as well as through the number of other international contracts, treaties, protocols and conventions, but they are not considered from the point-of-view of the Organizational needs and execution of the article X of the Convention.

In this category are also included all administrative measures and actions which are necessary while defining authority of the teams/units as well as their behavior, defining of neutrality and immunity.

For everything stated in this paper it would be very useful to create manuals which would contain all standard operative proceedings in every situation, from the request for assistance, transport, tactic of usage, behavior of the members, emergency situations to extraction of the teams/units.

CONCLUSION:

It is generally known that every organization, no matter whether they are governmental or international, longs to provide coordinated operation of all their subjects and components, according to unique plan and conception to fulfill obligations taken over, which are in the function of preserving the dignity of the organization. Those intentions are defined throughout the document, which is usually, called the doctrine.

We believe that it would be very useful that the Organization, in assistance with teams composed of SP experts, offer one such document to all SP for consideration, altogether with the suggestions for the solutions of the controversial question. Once such a document is accepted, which could be called "The Doctrine of providing assistance and protection of the State Parties according to article X CWC", the teams of experts set to disposal of the Organization by the SP, could prepare written forms in the lineament of regulations of the equipment, teams/units, norms (minimal administrative, material, personnel and legal criteria), directions, guidance, instructions, manuals, text-books, etc.